

**MF 03-2**

**Tax Type: Motor Fuel Use Tax**

**Issue: Failure To Have Motor Fuel Use Tax Decal/Permit**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**v.**

**JOHN DOE d/b/a  
ABC FARMS  
Taxpayer**

**Docket # 02-ST-0000**

**Account # 00-00000**

**Barbara S. Rowe  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis: The Illinois Department of Revenue (hereinafter the “Department”) issued a Notice of Tax Liability (hereinafter the “NTL”) to John Doe d/b/a ABC Farms (hereinafter the “Taxpayer”) for motor fuel use tax. The NTL alleges that the taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel tax license. The taxpayer timely protested the NTL. A hearing was held and after a thorough review of the facts and law presented, it is recommended that this matter be resolved in favor of the Department. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

**FINDINGS OF FACT:**

1. The taxpayer is located in Indiana. In November of 2001, taxpayer drove a 2000 Ford pick-up truck pulling a livestock goose neck trailer to Anywhere, Missouri to pick up baby pigs to haul back to Indiana. (Dept. Ex. No. 1)

2. On November 8, 2001 taxpayer was issued a citation for operating the truck and trailer in Illinois without displaying a valid motor fuel use tax license and decal, without a single-trip permit, and without an International Fuel Tax Agreement temporary permit. (Dept. Ex. No. 1)

3. Upon receiving the citation on November 8, 2001, the taxpayer immediately purchased a single trip permit and completed its trip through Illinois. (Dept. Ex. No. 1).

4. On July 26, 2002 the Department issue an NTL to the taxpayer for motor fuel use tax showing a penalty due of \$1,000 for failure to have a valid license while operating the vehicle in Illinois on November 8, 2001. (Dept. Ex. No. 1)

5. Taxpayer asserts that he had no knowledge of the requirement to display a valid motor fuel use tax license and decal, or a single-trip permit, or an International Fuel Tax Agreement temporary permit. (Tr. p. 9)

**CONCLUSIONS OF LAW:**

The NTL issued by the Department alleges that taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (hereinafter referred to as the “Act”) (35 ILCS 505/1 *et seq.*), which provides in part as follows:

Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction. (35 **ILCS** 505/13a.4)

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 **ILCS** 505/13a.5) A “motor carrier” is defined as any person who operates a commercial motor vehicle in Illinois. (35 **ILCS** 505/1.17)

Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. (35 **ILCS** 505/13a.4; see also 625 **ILCS** 5/11-1419.03) Section 13a.6 of the Act states that if a commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (35 **ILCS** 505/13a.6(b))

Section 21 of the Act incorporates by reference section 5 of the Retailers’ Occupation Tax Act (35 **ILCS** 120/1 *et seq.*), which provides that the Department’s determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 **ILCS** 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1<sup>st</sup> Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2<sup>nd</sup> Dist. 1978).

Taxpayer offered no documentary evidence why the penalty should not be imposed. Rather, he stated that he had no knowledge that Illinois requires the license or permit. If taxpayer had known he was doing something wrong he could have taken a shortcut or side road to miss

the scales. According to the taxpayer, Indiana law does not require licenses or permits when a farmer is hauling for his own business. (Tr. p. 9)

Taxpayer's circumstances are unfortunate but do not provide a basis for eliminating the penalty. Taxpayer clearly made a good faith effort to obtain the license and comply with the law after the issuance of the citation. Nevertheless, the Motor Fuel Tax Act does not contain a provision that allows the penalty to be abated based on the taxpayer's lack of knowledge of the law or the taxpayer's reasonable attempts to comply with the law after a citation is issued. The Act simply requires the taxpayer to obtain the license prior to operating a commercial motor vehicle in Illinois, and the failure to do so requires the imposition of a penalty. Because the taxpayer did not have an Illinois motor fuel use tax license, a single trip permit, or an International Fuel Tax Agreement license on the day it was operating the truck in Illinois, the penalty must be upheld.

For the foregoing reasons, it is recommended that the penalty be upheld.

Respectfully Submitted,

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Barbara S. Rowe  
Administrative Law Judge

Date: February 18, 2003